

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-123932-16

Date:

September 19, 2016

RE:

### Legend

Decedent =  
Date 1 =  
Executor =  
Attorney =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =

Dear :

This letter responds to your authorized representative's letter of July 26, 2016 and subsequent correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to specially value qualified real property under § 2032A of the Internal Revenue Code.

The facts and representations submitted are as follows. Decedent died on Date 1. Decedent's estate included farmland. Executor retained Attorney to prepare and timely file Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Decedent's Form 706 was due on Date 2. Appraisals for the estate's assets were obtained after Date 2.

Attorney advised Executor to make an election under § 2032A pursuant to the relief provisions under § 301.9100-2. On Date 3, Attorney filed Decedent's Form 706

requesting a 12-month extension of time to make an election, but failed to comply with the requirements under § 301.9100-2. On Date 4, the IRS began an examination of Decedent's Form 706. On Date 5, the IRS mailed Executor an Examination Report stating that the § 2032A election was not timely, and therefore, invalid. Executor requests an extension of time to make the § 2032A election.

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2032A(a)(1) provides, generally, that if the decedent was (at the time of his death) a citizen or resident of the United States, and the executor elects the application of § 2032A and files the agreement referred to in § 2032A(d)(2), then, for purposes of chapter 11, the value of qualified real property shall be its value for the use under which it qualifies, under § 2032A(b), as qualified real property.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2(a)(2)(vii) provides an automatic 12-month extension of time to make the estate tax election to specially value qualified real property (where the IRS has not yet begun an examination of the filed return) under § 2032A(d)(1) provided the taxpayer takes corrective action as defined in § 301.9100-2(c).

Under § 301.9100-2(c), corrective action means taking the steps required to file the election in accordance with the statute or the regulation published in the Federal Register, or the revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin. For those elections required to be filed with a return, corrective action includes filing an original or an amended return for the year the regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In this case, Executor failed to make the § 2032A election on a timely filed Form 706. Pursuant to Attorney's advice, Executor filed Decedent's Form 706 pursuant to an automatic extension of time to make an election, but failed to comply with the requirements under § 301.9100-2(c). The IRS then began its examination of Decedent's Form 706. Executor requested relief under §§ 301.9100-1 and 301.9100-3 after the IRS began its examination of Decedent's Form 706. However, we do not believe Executor acted in bad faith for purposes of § 301.9100-3(b)(1)(i). Executor had expressed previously his intent to make the election when, on Date 3, Executor requested relief under § 301.9100-2 for an extension of time to make an election, and Executor made such request before the IRS began its examination of Decedent's Form 706. In addition, Executor relied on Attorney's advice and believed the election filed on the Form 706 was valid. Furthermore, when the IRS determined that the election was untimely and invalid, Executor immediately sought relief under §§ 301.9100-1 and 301.9100-3.

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Decedent's estate is granted an extension of time until 120 days from the date of this letter to make an election under § 2032A to specially value qualified real property. The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental return. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether the estate qualifies for special use valuation under § 2032A.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: Lorraine E. Gardner  
Lorraine E. Gardner  
Senior Counsel, Branch 4  
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes  
Copy of this letter

cc: